IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-13397-2022
Date of decision : 15.11.2022

Jayant Kumar (Minor) …….Petitioner

Versus

State of Haryana and others ….Respondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. R.S. Bains, Senior Advocate, with
Mr. Aman Raj Bawa, Advocate, and
Mr. Manan Dhull, Advocate,
for the petitioner.

Mr. Deepak Balyan, Addl. Advocate General, Haryana.

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RAVI SHANKER JHA, CHIEF JUSTICE (Oral)

This petition has been filed by the petitioner praying for the following reliefs :-

> *"a. Issue a writ, direction, order specially in the nature of MANDAMUS directing the Respondents to issue the Schedule for admission in Class 2nd to Class 8th under Rule 134A of Haryana School Education Rules, 2003, amended in 2013 for the academic session 2022-2023;*
>
> *b. Any other appropriate writ, order or direction which this Hon'ble Court deems fit and appropriate under the peculiar facts and circumstances of this case, may also be issued in the interest of equity, justice and fair play."*

Learned senior counsel for the petitioner submits that Rule 134A was incorporated in the Haryana School Education Rules, 2003 (for short, 'the Rules of 2003'), making provision for reservation in admission to schools for poor meritorious students to the extent of 25%, which was subsequently reduced to 10%. It is submitted that this

beneficial provision was introduced by the State Legislature in exercise of its Rule making power contained in Section 24 of the Haryana School Education Act, 1995 (for short, 'the Act of 1995').

It is contended that though the respondents have issued a subsequent notification (P-4) published in the Haryana Government Gazette on 28.03.2022, whereby the provision of Rule 134A of the Rules of 2003 has been deleted and omitted, but as the State Legislature has not complied with the provision of Section 24 (3) of the Act of 1995 regarding prior laying, therefore, the Rule continues to remain in existence, and in such circumstances, the petitioner has prayed that the respondent – authorities be directed to issue the Schedule for admission in Class 2nd to Class 8th by treating Rule 134A of the Rules of 2003 to be in existence as on date as well. Learned senior counsel for the petitioner further submits that in accordance with the provision of Section 24 (3) of the Act of 1995, prior approval of the House of the State Legislature is necessary and mandatory for bringing into existence any amendment in the Rules of 2003. He submits that as the amendment has not been laid before the House of the State Legislature seeking prior approval, therefore, omission of Rule 134A of the Rules of 2003 has not come into force, and in such circumstances, since Rule 134A still continues to be in existence, relief prayed for by the petitioner may be granted.

We have heard learned senior counsel for the petitioner at length. We have also perused the provision of Section 24 (3) of the Act of 1995, which is in the following terms :-

> *"Every rule made under this section shall be laid as soon as may be after it is made before the House of the State Legislature while it is in session for a total period of ten*

> *days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the successive sessions aforesaid, the House agrees in making any modification in the rule or the House agrees that the rule should not be made, the rule shall thereunder have effect only in such modified form of be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."*

A bare perusal of the aforesaid Section makes it clear that the provision for laying of the Rules before the House of the State Legislature is not a provision requiring prior laying but it specifically and clearly states that the Rule has to be laid before the House of the State Legislature as soon as may be after it is made. Language of the provision is clear and when confronted with the same, learned senior counsel for the petitioner fairly concedes that the aforesaid provision stipulates and provides for laying of the Rule before the House of the State Legislature as soon as may be after it is made. In such circumstances, as the provision of the Statute is directory and not mandatory and does not require prior laying of the Rule, it is evident that the notification dated 28.03.2022 (P-4) deleting the provision of Rule 134A from the Rules of 2003 has come into force from the date it has publication and as on date, Rule 134A does not exist on the Statute book.

In this regard, the following observations of the Supreme Court in ***Jan Mohammad Noor Mohammad Bagban Vs. State of Gujarat and another, AIR 1966 SC 385*** are relevant :-

> *"18. Finally, the validity of the rules framed under the Bombay Act 22 of 1939 was canvassed. By Section 26 (1) of*

the Bombay Act the State Government was authorised to make rules for the purpose of carrying out the provisions of the Act. It was provided by sub-section (5) that the rules made under Section 26 shall be laid before each of the Houses of the Provincial Legislature at the session thereof next following and shall be liable to be modified or rescinded by a resolution in which both Houses concur and such rules shall, after notification in the Official Gazette, be deemed to have been modified or rescinded accordingly. It was urged by the petitioner that the rules framed under the Bombay Act 22 of 1939 were not placed before the Legislative Assembly or the legislative Council at the first session and therefore they had no legal validity. The rules under Act 22 of 1939 were framed by the Provincial Government of Bombay in 1941. At that time there was no Legislature in session, the Legislature having been suspended during the emergency arising out of World War II. The session of the Bombay Legislative Assembly was convened for the first time after 1941 on May 20, 1946 and that session was prorogued on May 24, 1946. The second session of the Bombay Legislative Assembly was convened on July 15, 1946 and that of the Bombay Legislative Council on September 3, 1946 and the rules were placed on the Assembly Table in the second session before the Legislative Assembly on September 2, 1946 and before the Legislative Council on September 13, 1946. Section 26(5) of Bombay Act 22 of 1939 does not prescribe that the rules acquired validity only from the date on which they were placed before the Houses of Legislature. The rules are valid from the date on which they are made under Section 26(1). It is true that the Legislature has prescribed that the rules shall be placed before the Houses of Legislature, but failure to place the rules before the Houses of Legislature does not affect the validity of the rules, merely because they have not been placed before the Houses of the Legislature. Granting that the provisions of sub-section (5) of Section 26 by reason of

> *the failure to place the rules before the Houses of Legislature were violated, we are of the view that sub-section (5) of Section 26 having regard to the purposes for which it is made, and in the context in which it occurs, cannot be regarded as mandatory. The rules have been in operation since the year 1941 and by virtue of Section 64 of the Gujarat Act 20 of 1964 they continue to remain in operation."*

Further, while relying upon the aforesaid decision and considering other decisions, the Supreme Court in ***M/s Atlas Cycle Industries Ltd. and others Vs. The State of Haryana, (1979) 2 Supreme Court Cases 196*** observed as under :-

> *"22. Now at page 317 of the aforesaid Edition of Craies on Statute Law, the questions whether the direction to lay the rules before Parliament is mandatory or merely directory and whether laying is a condition precedent to their operation or may be neglected without prejudice to the effect of the rules are answered by saying that "each case must depend on its own circumstances or the wording of the statute under which the rules are made." In the instant case, it would be noticed that sub-section (6) of Section 3 of the Act merely provides that every order made under Section 3 by the Central Government or by any officer or authority of the Central Government shall be laid before both Houses of Parliament, as soon as may be, after it is made. It does not provide that it shall be subject to the negative or the affirmative resolution by either House of Parliament. It also does not provide that it shall be open to the Parliament to approve or disapprove the order made under Section 3 of the Act. It does not even say that it shall be subject to any modification which either House of Parliament may in its wisdom think it necessary to provide. It does not even specify the period for which the order is to be laid before both Houses of Parliament nor does it provide any penalty*

for non-observance of or non-compliance with the direction as to the laying of the order before both Houses of Parliament. It would also be noticed that the requirement as to the laying of the order before both Houses of Parliament is not a condition precedent but subsequent to the making of the order. In other words, there is no prohibition to the making of the orders without the approval of both Houses of Parliament. In these circumstances, we are clearly of the view that the requirement as to laying contained in sub-section (6) of Section 3 of the Act falls within the first category, i.e. "simple laying" and is directory not mandatory. We are fortified in this view by a catena of decisions, both English and Indian. In ***Bailey v. Williamson, 1873 LR VIII Q B 118*** *whereby Section 9 of the Parks Regulations Act, 1872 passed on June 27, 1872 "to protect the royal parks from injury, and to protect the public in the enjoyment of those royal parks and other royal possessions for the purpose of innocent recreation and exercise" it was provided that any rules made in pursuance of the first schedule to the Act shall be forthwith laid before both Houses of Parliament, if Parliament be sitting, or if not, then within three weeks after the beginning of the then next ensuing session of Parliament; and if any such rules shall be disapproved by either House of Parliament within one month of the laying, such rules, or such parts thereof as shall be disapproved shall not be enforced and Rules for Hyde Park were made and published on September 30, 1872 when Parliament was not sitting and in November 18, 1872, the appellant was convicted under Section 4 of the Act for that he did unlawfully act in contravention of Regulation 8 contained in the first Schedule annexed thereto by delivering a public address not in accordance with the rules of the said Park but contrary to the Statute, and it was inter alia contended on his behalf that in the absence of distinct words in the statute stating that the rules would be operative in the interval from the time they were made to the time when*

Parliament should meet next or if Parliament was sitting then during the month during which Parliament had an opportunity of expressing its opinion upon them, no rule made as supplementing the schedule could be operative so as to render a person liable to be convicted for infraction thereof unless the same had been laid before the Parliament, it was held overruling the contention that the rules became effective from the time they were made and it could not be the intention of the Legislature that the laying of the rules before Parliament should be made a condition precedent to their acquiring validity and that they should not take effect until they are laid before and approved by Parliament. If the Legislature had intended the same thing as in Section 4, that the rules should not take effect until they had the sanction of the Parliament, it would have expressly said so by employing negative language.

23. In ***Starey v. Graham, (1899) 1 Q B 406,*** *where it was contended that the Register of Patent Agents Rules, 1889 which had been repealed by Rules of 1890 could not be re-enacted by mere reference without complying with the provisions of Section 101, sub-section (4) of 46 and 47 Vict. c. 57 according to which, a copy of the Rules of 1889 should also have been laid before both Houses of Parliament in order to make them valid, Channell, J. said :*

> *I somewhat doubt whether the provisions of Section 101 are more than directory and whether it is necessary in any particular case where reliance is placed on such rules to prove that in fact its provisions had been complied with.*

24. In ***Jan Mohammad Noor Mohammad Bagban v. The State of Gujarat, AIR 1966 SC 385,*** *where it was urged by the petitioner that the rules framed by the Provincial Government in 1941 in exercise of the powers conferred on it under Section 26(1) of the Bombay Agricultural Produce Markets Act (22 of 1939) had no legal validity as they were not laid before each of the Houses of the Provincial*

Legislature at the session thereof next following as provided by sub-section (5) of Section 26 of the Act, this Court rejected the contention and upheld the validity of the said rules. The following observations made in that case by Shah, J. (as he then was) on behalf of the Constitution Bench are apposite:-

> *The rules under Act 22 of 1939 were framed by the Provincial Government of Bombay in 1941. At that time there was no Legislature in session, the Legislature having been suspended during the emergency arising out of World War II. The session of the Bombay Legislative Assembly was convened for the first time after 1941 on May 20, 1946 and that session was prorogued on May 24, 1946. The second session of the Bombay Legislative Assembly was convened on July 15, 1946 and that of the Bombay Legislative Council on September 3, 1946 and the rules were placed on the Assembly Table in the second session before the Legislative Assembly on September 1, 1946 and before the Legislative Council on September 13, 1946.* ***Section 26 (5) of Bombay Act 22 of 1939 does not prescribe that the rules acquired validity only from the date on which they were placed before the Houses of Legislature. The rules are valid from the date on which they are made under Section 26(1). It is true that the Legislature has prescribed that the rules shall be placed before the Houses of Legislature, but failure to place the rules before Houses of Legislature does affect the validity of the rules, merely because they have not been placed before the Houses of the Legislature. Granting that the provisions of sub-section (5) of Section 26 by reason of the failure to place the rules before the Houses of Legislature were violated, we are of the view that Sub-section (5) of Section 26 having regard to the purposes for which it is made,***

and in the context in which it occurs, cannot be regarded as mandatory. *(Emphasis supplied). The rules have been in operation since the year 1941 and by virtue of Section 64 of the Gujarat Act 20 of 1964 they continue to remain in operation.*

25. In ***D. K. Krishnan v. Secretary, Regional Transport Authority, Chittor, AIR 1956 Andhra 129,*** *where the validity of Rule 134A of the Madras Motor Vehicles Rules, 1940, made under the Motor Vehicles Act, 1939 empowering the Regional Transport Authority to delegate its functions to the Secretary was challenged on the ground that it was not laid before the Legislature of the Madras State as required by Section 133(3) of the Act which provided that the rules shall be laid for not less than fourteen days before the Legislature as soon as possible after they are made and shall be subject to such modification as Parliament or such Legislature may make during the session in which they are so laid, Sabba Rao, J. (as he then was) after an exhaustive review of the case law and the text books on constitutional law by eminent jurists repelled the contention observing as follows :-*

The aforesaid discussion in the text books and the case law indicate the various methods adopted by the Parliament or legislature to control delegated legislation. That control is sought to be effected by directing the rules or regulations made by the delegated authority to be laid before the Parliament.

Where the statute makes the laying of the rules before Parliament a condition precedent or the resolution of the Parliament a condition subsequent, there is no difficulty as in the former case, the rule has no legal force at all till the condition precedent is complied with and in the latter case, it ceases to have force from the date of non-compliance with the condition subsequent.

Nor can there be any difficulty in a case where the Parliament or the Legislature, as the case may be, specifically prescribes the legal effect of non-compliance with that condition. But more important question arises when the Parliament directs the laying of the rules before the Parliament without providing for the consequences of non-compliance with the rule.

In the case of a statute directing rules to be laid before the Parliament or the Legislature without any condition attached, the rule is only directory. Though the statute says that the rules shall be laid before the Parliament as the provision in the statute is conceived in public interests, the dereliction of the duty by the Minister or other officer concerned in not following the procedure should not be made to affect the members of the public governed by the rules.

It may be asked and legitimately too that when the Parliament to keep its control over delegated legislation directs that the rules shall be laid before the Parliament and if that rule is construed as directory, the object itself would be defeated. But the Parliament or the Legislature, as the case may be if they intended to make that rule mandatory, they would have clearly mentioned the legal consequences of its non-compliance as they have done in other cases.

This rule [i.e. the one contained in Section 133(3]) therefore, is not made either a condition precedent or a condition subsequent to the coming into force of the rules. It does not provide for any affirmative resolution. The rule continues to be in force till it is modified by the Parliament.

If sub-section (3) is only directory, in view of the opinion expressed by us, it is clear from a fair reading of the words used in the section that the rules made under the section came into effect immediately they were published and they continued to be in force

because it is not suggested that they were modified by the Legislature. We, therefore, hold that the rule in question is valid.

*26. In **State v. Karna, (1973) 24 RLW 487,** where the very question with which we are concerned in the present case cropped up in connection with the Rajasthan Foodgrains (Restrictions on Border Movement) Order, 1959, a bench of Rajasthan High Court said as follows:-*

> *It is important to note that laying the Order before both the Houses of Parliament is not a condition precedent for bringing into force the Order. All that sub-section (6) provides is that every Order made under Section 3 of the Essential Commodities Act by the Central Government or by any officer or authority of the Central Government shall be laid before both the Houses of Parliament as soon as after it is made. It is significant that the Order is valid and effective from the date it is duly promulgated. Even the limit or period within which it must be placed before the Parliament has not been specified. It is, therefore, not possible to hold that sub-section (6) of Section 3 of the Essential Commodities Act is mandatory. If the Legislature intended that in order to provide an adequate safeguard it was necessary to make the said provision mandatory it could have done so in express words. We are, therefore, of the opinion that the Order cannot be considered as invalid merely because the State was not able to put on record proof of the fact that the Order was laid before both the Houses of Parliament.*

*27. In **Mathura Prasad Yadava v. Inspector General, Railway Protection Force, Railway Board, New Delhi, (1974) 19 MPLJ 373**, where it was contended that Regulation 14 of the Railway Protection Force Regulations, 1966 made under Section 21 of the Railway Protection Force Act (23 of 1957) was invalid as it was not laid before*

both Houses of Parliament as required by sub-section (3) of Section 21 of the Act, it was held:

> *What then is the consequence of failure to lay the regulation ? . . . A correct construction of any particular laying clause depends upon its own terms. If a laying clause defers the coming into force of the rules until they are laid, the rules do not come into force before laying and the requirement of laying is obligatory to make the rule operative. So the requirement of laying in a laying clause which requires an affirmative procedure will be held to be mandatory for making the rules operative, because, in such cases the rules do not come into force until they are approved, whether with or without modification, by Parliament. But in case of a laying clause which requires a negative procedure the coming into force of the rules is not deferred and the rules come into force immediately they are made. The effect of a laying clause of this variety is that the rules continue subject to any modification that Parliament may choose to make when they are laid; but the rules remain operative until they are so modified. Laying clauses requiring a negative procedure are, therefore, construed as directory. The matter is put beyond controversy by the decision of the Supreme Court in* ***Jan Mohd. v. State of Gujarat*** *(supra). Our conclusion, therefore, is that the laying requirement enacted in Section 21(3) of the Act is merely directory. It logically follows that failure to lay Regulation 14 has no effect on its validity and it continues to be effective and operative from the date it was made.*

28. Relying on the decision in ***D. K. Krishnan v. Secretary Regional Transport Authority, Chittoor*** *(supra), Grover, J. speaking for the bench in* ***Krishna Khanna v. State of Punjab, AIR 1958 Punj 32*** *said that sub-section (6)*

of Section 3 of the Essential Commodities Act, 1955 was merely of a directory nature and its non-compliance did not render the Punjab Coal Control Order, 1955 invalid or void.

*29. **Metcalfe v. Cox 1895 AC 328 (HL)** (2), where the Commissioners (charged with the duty of making provisions for improving the administration of the Scottish Universities) assuming to act under powers of Section 16 of the Universities (Scotland) Act, 1889 executed an instrument in writing declaring that they had affiliated and did thereby affiliate the University College of Dundee to and make it form part of the University of St. Andrews which was treated as an ordinance and held to be invalid on the ground that it had not been laid before Parliament is not helpful to the appellants, as the decision in that case turned upon the construction of the language of Section 20 of the said Act which provided that all ordinances made by the Commissioners are to be published in the Edinburgh Gazette, laid before Parliament and submitted to Her Majesty, the Queen for approval and no such ordinance shall be effectual until it shall have been so published, laid before Parliament and approved by Her Majesty in Council.*

*30. The decision of this Court in **Narendra Kumar v. The Union of India, AIR 1960 SC 430** on which counsel for the appellants have heavily leaned is clearly distinguishable. In that case, the Non-ferrous Metal Control Order, 1958 was held to be invalid essentially on the ground that the principles specified by the Central Government in accordance with Clause 4 of the Order were not published either on April 2, 1958 on which the order was published in the Government Gazette or any other date. It would be noticed that while considering the effect of non-publication of the aforesaid principles which formed an integral part of the order by which alone the Central Government could regulate the distribution and supply of the essential commodities, it was only incidentally that a mention was*

> *made by the Court to the effect that the principles had not been laid before both Houses of Parliament.*
>
> *31. Likewise the decisions of this Court in* ***Express Newspapers (Private) Ltd. v. The Union of India, AIR 1958 SC 578*** *and* ***In re The Kerala Education Bill 1957, AIR 1958 SC 956*** *are also not helpful to the appellants. The point involved in the present case was not directly in issue in those cases and the observations made therein about laying were merely incidental.*
>
> *32. From the foregoing discussion, it inevitably follows that the Legislature never intended that non-compliance with the requirement of laying as envisaged by sub-section (6) of Section 3 of the Act should render the order void. Consequently non-laying of the aforesaid notification fixing the maximum selling prices of various categories of iron and steel including the commodity in question before both Houses of Parliament cannot result in nullification of the notification. Accordingly, we answer the aforesaid question in the negative. In view of this answer, it is not necessary to deal with the other contention raised by the respondent to the effect that the aforesaid notification being of a subsidiary character, it was not necessary to lay it before both Houses of Parliament to make it valid.*

The judgment rendered in **Atlas Cycle Industries Ltd. case** (supra) was further relied upon by the Supreme Court in ***Prohibition & Excise Supdt., A.P. and others Vs. Toddy Tappers Coop. Society, Marredpally and others, (2003) 12 Supreme Court Cases 738***.

Again, the Supreme Court in ***Bank of India and others Vs. O.P. Swarnakar and others, (2003) 2 Supreme Court Cases 721,*** held as under :-

> *"125. Secondly, even if the same was a regulation, the laying-down rule is merely a directory one and not mandatory.*

126. *In **Jan Mohammad's case** (supra), the law is stated in following terms:*

> *"18. "Finally, the validity of the rules framed under the Bombay Act 22 of the 1939 was canvassed. By Section 26(1) of the Bombay Act the State Government was authorised to make rules for the purpose of carrying out the provisions of the Act. It was provided by sub-section (5) that the rules made under Section 26 shall be laid before each of the Houses of the Provincial Legislature at the session thereof next following and shall be liable to be modified or rescinded by a resolution in which both Houses concur and such rules shall, after notification in the Official Gazette, be deemed to have been modified or rescinded accordingly. It was argued by the petitioner that the rules framed under the Bombay Act, 22 of 1939 were not placed before the Legislative Assembly or the Legislative Council at the first session and therefore they had no legal validity. The rules under Act 22 of 1939 were framed by the Provincial Government of Bombay in 1941. At that time there was no Legislature in session, the Legislature having been suspended during the emergency arising out of World War II. The session of the Bombay Legislative Assembly was convened for the first time after 1941 on 20-5-1946 and that session was prorogued on 24-5-1946. The second session of the Bombay Legislative Assembly was convened on 15-7-1946 and that of the Bombay Legislative Council on 3-9-1946 and the rules were placed on the Assembly Table in the second session before the Legislative Assembly on 2-9-1946 and before the Legislative Council on 13-9-1946. Section 26(5) of Bombay Act 22 of 1939 does not prescribe that the rules acquired validity only from the date on which they were placed before the Houses of Legislature.*

The rules are valid from the date on which they are made under Section 26(1). It is true that the Legislature has prescribed that the rules shall be placed before the Houses of Legislature, but failure to place the rules before the Houses of Legislature does not affect the validity of the rules, merely because they have not been placed before the Houses of the Legislature. Granting that the provisions of sub-section (5) of Section 26 by reason of the failure to place the rules before the Houses of Legislature were violated, we are of the view that sub-section (5) of Section 26 having regard to the purposes for which it is made, and in the context in which it occurs, cannot be regarded as mandatory. The rules have been in operation since the year 1941 and by virtue of Section 64 of the Gujarat Act 20 of 1964 they continue to remain in operation."

*127. In **Atlas Cycle Industries' case** (supra) the same view has been reiterated.*

128. We, therefore, are of the opinion that the scheme in question cannot be said to be bad in law."

The aforesaid view has been reiterated by the Supreme Court in ***Veneet Agrawal Vs. Union of India and others, (2007) 13 Supreme Court Cases 116,*** while observing as under :-

"15. *This apart the issue relating to the laying down of rules/regulations on the table of the Houses for the period provided under the statute under which they are so framed has been dealt with by this Court in various cases. Some of these cases are **Jan Mohammad Noor Mohammad Bagban v. State of Gujarat,** (supra), **Atlas Cycle Industries Ltd. v. State of Haryana,** (supra), **Hukum Chand v. Union of India, (1972) 2 SCC 601,** and **Bank of India v. O.P. Swarnakar** (supra). In a recent judgment, this Court followed the view taken in **M/s. Atlas Cycle Industries Ltd.***

case (supra) *and* ***Prohibition & Excise Suptd., A.P. v. Toddy Tappers Coop. Society*** *(supra).*

16. In all these cases, the issue relating to laying down and interpretation of the said regulation was examined. It has been held in all these cases that the laying of the rule before both the Houses of Parliament is merely a directory rule and not mandatory. In the Case of ***O.P. Swarnakar*** *(supra), the provision providing for laying the rules before the Legislative was exactly similar to Section 31 of the SEBI Act. It was also held by this Court that the said provision was directory and not mandatory. The non-compliance with the laying of the rule before the Parliament was not a sufficient ground to declare the rules/regulations framed under the statute as to be ultra vires. In* ***Toddy Tappers Coop. Society*** *case (supra) Hon'ble Mr. Justice Sinha in his concurring judgment following the decision in* ***Atlas Cycle Industries Ltd. case*** *(supra) and* ***Quarry Owners' Assn. v. State of Bihar, (2000) 8 SCC 655*** *and various other judgments, distinguishing the judgment in* ***Union of India v. National Hydroelectric Power Corpn. Ltd., (2001) 6 SCC 307****, (which has been relied upon by counsel for the appellant before us as well) has held as under:- (SCC p. 756, para 32)*

> *"32. The said observations, thus, must be held to be confined to the fact of the matter obtaining therein. In that case it was found as of fact that the rule had never been placed before the Legislature and, thus, there was even no substantial compliance with the law. The Bench, however, did not consider the effect of the directory nature of such a provision, in the light of the decision of this Court in* ***Atlas Cycle Industries*** *(supra) and* ***Quarry Owners' Assn.*** *(supra). The Court further did not notice the difference between the expressions 'approval' and 'permission'. Section 16 of the Water Act, construction whereof was in question did not use the expression 'prior approval'.*

The word 'approval' indicates an Act which has already been made and is required to be approved whereas in the case of 'permission', the situation would be different. This aspect of the matter has been considered by this Court in ***High Court of Judicature for Rajasthan v. P.P. Singh, (2003) 4 SCC 239*** *stating : (SCC p. 255, para 40)*

'40. When an approval is required, an action holds good. Only if it is disapproved it losses its force. Only when a permission is required, the decision does not become effective till permission is obtained. (See ***U.P. Avas Evam Vikas Parishad v. Friends Coop. Housing Society Ltd. 1995 Supp (3) SCC 456)****, In the instant case both the aforementioned requirements have been fulfilled."*

17. It was observed that provision was merely directory and not mandatory and even if the rules were not laid before the House at all even then the non-compliance with the laying down of the rules before the Parliament could not be a ground to declare the rules/regulations framed under the statute as ultra vires.

18. Although in the present case the rules were laid before both the Houses as required under Section 31, as discussed in the earlier paragraph of the judgment but even if it is assumed that the Rules/Regulations in question did not complete the requisite period of 30 days, the provisions of Section 31 of the SEBI Act not being mandatory and merely directory, as has been held by this Court in the aforementioned cases, the Rules/Regulations cannot be held to be ultra vires on the ground of non-completion of 30 days' period after laying of the Rules before both the Houses of Parliament."

In view of the aforesaid legal and factual position, prayer made by the petitioner to the effect that the respondents may be directed

to issue the Schedule for admission by applying Rule 134A of the Rules of 2003 is misconceived and cannot be allowed.

Petition is, accordingly, dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

November 15, 2022
ndj

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No